



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of ~~the~~ Appeal of)
)
THOMAS C. AND DONNA G. ALBERTSON)

For Appellants: Thomas C. Albertson
Donna G. Albertson,
in pro. per.

For Respondent: Elleene A. Tessier
Counsel

O P I N I O N

This appeal is made pursuant to section 18601.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Thomas C. and Donna G. Albertson for a renter's credit for 1981.

Appeal of Thomas C. and Donna G. Albertson

Appellants were married on September 12, 1981. During all of 1981 before the marriage, Donna had rented her residence and Thomas had owned his. Thomas claimed the homeowner's property tax exemption for 1981. On their California joint personal income tax return for 1981, appellants claimed a renter's credit which respondent subsequently disallowed,

Revenue and Taxation Code section 17053.5 allows a refundable credit for a "qualified renter." A qualified renter is an individual who, on March 1 of the taxable year, was a resident of California and rented and occupied premises in this state which constituted his principal place of residence. (Rev. & Tax. Code, § 17053.5, subd. (c).) Subdivision (c) of section 17053.5 also provides:

The term "qualified renter" does not include an individual who has been granted or whose spouse has been granted the homeowner's property tax exemption during the taxable year. This paragraph shall not apply in the case of an individual whose spouse has been granted the homeowner's property tax exemption if each spouse maintained a separate residence for the entire taxable year.

Respondent disallowed the claimed credit because Thomas had claimed the homeowner's property tax exemption for 1981 and appellants had not maintained separate residences for the entire taxable year. Appellants do not deny the facts upon which respondent's disallowance was based, but argue that the credit should be allowed because Donna met the requirements of a qualified renter on March 1, 1981. They contend that to find otherwise would create a discriminatory result by denying all or a part of the credit to persons who marry or divorce after March 1. They have also submitted a number of suggestions for changing the renter's credit provisions..

Although Donna did meet the basic requirements of a "qualified renter" on March 1, 1981, her marital status for the taxable year is determined as of the end of 1981. (Rev. & Tax. Code, § 17060.) Section 17053.5, subdivision (c), clearly prohibits a married couple from claiming both a homeowner's property tax exemption and a renter's credit for the same taxable year unless the spouses maintained separate residences for the entire year. Because they lived together for part of the year and Thomas had claimed the homeowner's property tax exemption, appellants are not entitled to a renter's credit.

Appeal of Thomas C. and Donna G. Albertson

Whatever may be the merits of appellants' objections to the renter's credit provisions, they are not appropriately addressed to this forum. Appellants' arguments should be addressed to the Legislature, which has the authority to change the law, rather than to this board, which is charged with enforcing the law as written. (See Appeal of Daniel G. and Julie M. Nauman, Cal. St. Bd. of Equal., Aug. 1, 1980.)

For the reasons stated above, we must sustain respondent's action.

Appeal of Thomas C. and Donna G. Albertson

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Thomas C. and Donna G. Albertson for a renter's credit for 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day
of January , 1984, by the State Board of Equalization,
with Board **Members** Mr. Nevins, Mr. Dronenburg and **Mr.** Bennett
present.

Richard Nevins _____, Chairman

Ernest J. Dronenburg, Jr. _____, Member

William II. Bennett _____, Member

_____ , Member

_____ , Member